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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/931,295

08/16/2001

David F. Craddock

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3184

7590

04/18/2006

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EXAMINER

RYMAN, DANIEL J

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/931,295

Applicant(s)

CRADDOCK ET AL.

Examiner

Daniel J. Ryman

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 4, 7, 8, 14, 17, 18, 24, 27 and 28.

Claim(s) objected to: _____.

Claim(s) rejected: 1-3, 5, 9-13, 15, 19-23, 25, 29 and 30.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.


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Continuation of 11. does NOT place the application in condition for allowance because: Applicant first asserts that Applicant's Admitted Prior Art (AAPA) "is directed to placing physical queue pairs in a time-wait state." However, "[c]laim 1 is different in that as part of tearing down the connection, a virtual connection unit pair is placed in a time-wait state." Therefore, Applicant concludes that "none of the cited references teach or suggest placing a virtual connection unit pair in a time-wait state." Examiner, respectfully, disagrees. As outlined in the previous Office Action (mailed 2/6/2006), Erimli discloses using "virtual connection unit pairs." Examiner relies upon AAPA to teach placing connection unit pairs in a time wait state. As such, the combination of Erimli and AAPA suggests placing virtual connection unit pairs in a time wait state. As such, Examiner maintains that the cited prior art disclose placing a virtual connection unit pair in a time-wait state.

Applicant further asserts that AAPA is not valid prior art since 35 USC 103(c) expressly precludes Applicant's own related work from being used in a 35 USC 103 rejection. However, "[w]here the specification identifies work done by another as 'prior art,' the subject matter so identified is treated as admitted prior art," MPEP Sec. 2129 (citing to *In re Nomiya*, 509 F.2d 566, 571, 184 USPQ 607, 611 (CCPA 1975)), and where, absent a credible explanation, Examiner is to treat subject matter identified a "prior art" as the work of another, *id.* This admission is available as prior art, even if the prior art in the admission would not otherwise be valid under one of the statutory categories of 35 USC 102. *Id.* Since 35 USC 103(c) only applies to certain statutory categories under 35 USC 102, and since admissions of prior art by Applicant do not have to even fall within the statutory categories of 35 USC 102 to be considered prior art, it is inconsistent to exclude admissions by Applicant under 35 USC 103(c).

Given the foregoing, Examiner maintains that the claims are obvious in view of the cited prior art.